

FCC MAIL SECTION

DOCKET FILE COPY ORIGINAL

APR 30 11 42 AM '96

DISC 11-11-96

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FCC 96-195

In the Matter of)
)
Amendment of Part 80 of the) CI Docket No. 95-54
Commission's Rules Regarding)
the Inspection of Great Lakes)
Agreement Ships)

REPORT AND ORDER

Adopted: April 25, 1996

Released: April 26, 1996

By the Commission:

I. INTRODUCTION

1. In this Report and Order we adopt rules that will require owners and operators of ships subject to the annual inspection requirements of the Agreement between the United States and Canada for the Promotion of Safety on the Great Lakes by Means of Radio (Great Lakes Agreement)¹ to have the inspection performed by persons holding an FCC General Radiotelephone Operator License, a GMDSS Radio Maintainer's License, a Second Class Radiotelegraph Operator's Certificate, or a First Class Radiotelegraph Operator's Certificate instead of by Commission staff.² These changes will reduce economic burdens on the public and the Commission and will increase the availability of competent, private sector inspectors to conduct Great Lakes Agreement inspections without adversely affecting safety and, thus, provide greater convenience for the maritime industry.

¹ Agreement Between Canada and the United States for the Promotion of Safety on the Great Lakes by Means of Radio, T.I.A.S. 7837, amended T.I.A.S. 9352 (Great Lakes Agreement). See Attachment C.

² See Part 13 of the Commission's Rules, 47 C.F.R. Part 13, for a complete description of the Commission's license structure.

II. BACKGROUND

2. The Great Lakes Agreement requires, among other things, that all vessels over 20 meters (65 feet), most towing vessels, and vessels carrying more than six passengers for hire be equipped with a marine VHF radiotelephone installation. Additionally, the Bridge-to-Bridge Act applies to all vessels subject to the Great Lakes Agreement.³ The Great Lakes Agreement is intended to promote safety of life and property on the Great Lakes by means of radio.⁴ The Great Lakes Agreement requires that these installations be inspected at least once every thirteen months either by officers of the Contracting Governments or by persons nominated for that purpose or organizations recognized by the Contracting Government.⁵ The Commission's Rules, however, require that such inspections be conducted by Commission personnel.⁶ We proposed in a Notice of Proposed Rulemaking (Notice), CI Docket 95-54,⁷ to permit owners and operators of Great Lakes Agreement vessels to have inspections performed by the private sector, specifically a classification society, in lieu of Commission staff.⁸

III. DISCUSSION

3. We received 11 comments, one reply comment and one ex parte comment in response to the Notice.⁹ Commenters overwhelmingly supported our proposal to permit the inspection of ships subject to the Great Lakes Agreement by the private sector rather than by the Commission. Commenters also overwhelmingly opposed limiting the inspection only to

³ The Bridge-to-Bridge Act requires a marine VHF radio installation that is identical to the installation required by the Great Lakes Agreement. The Act imposes no inspection requirement. See 33 U.S.C. §§ 1201-1208 (1991). The Commission's Rules, however, do require an inspection of Bridge-to-Bridge installations on Great Lakes Agreement vessels. See sections 80.1001-80.1023 of the Commission's Rules, 47 C.F.R. §§ 80.1001-1023.

⁴ See Attachment C for relevant excerpts of the Great Lakes Agreement.

⁵ See Article XII, Great Lakes Agreement.

⁶ See Sections 80.59, 80.953, 80.1005, 47 C.F.R. §§ 80.59, 80.953, 80.1005.

⁷ Notice of Proposed Rulemaking (Notice), CI Docket 95-54, 10 FCC Rcd 5418 (1995).

⁸ A classification society "classes" a vessel by inspecting it and certifying that the ship is mechanically sound and fit. In the United States, the American Bureau of Shipping conducts inspections for the United States Coast Guard to determine the maximum load that may be carried by U. S. vessels. See 46 U.S.C. § 3316. The American Bureau of Shipping began classing wooden hull vessels in 1862. Classification societies also, among other things, conduct ship radio station inspections for compliance with international and domestic regulations. Internationally there are more than 40 classification societies that conduct safety inspections.

⁹ Commenters are listed in Attachment A.

classification societies.

4. Safety. Because the Commission is ultimately responsible for guaranteeing that the radio installations of subject ships meet the safety requirements of the Great Lakes Agreement, we requested specific comments on several questions related to safety.¹⁰ No commenters stated that our proposal to privatize the inspection of Great Lakes Agreement vessels would adversely affect safety. The Passenger Vessel Association (PVA) states that it represents a majority of the Great Lakes Agreement vessels that the Commission now inspects.¹¹ PVA states that safety will not be impaired by privatization.¹² Further, Washington Island Ferry Lines, Inc. (Washington Island), states that the best incentive for maintaining properly operating radio equipment is the desire of the vessel master and the owner to be able to transmit and receive safety and routine communications between the vessel and the home office.¹³

5. In the Notice we proposed conducting a study of the effects on safety of privatizing the inspection of Great Lakes Agreement vessels. Several commenters object to any further study of privatization. Washington Island contends that we have over 20 years of experience since the adoption of the Great Lakes Agreement and that further study is unnecessary.¹⁴ PVA opposes a further study and notes that any benefit resulting from a study will be more than offset by costs of delay.¹⁵ We did not intend to pre-condition a final decision on the results of a study. Further, we are convinced by the Commission's inspection records of Great Lakes Agreement vessels that a further study is not required. In the past five years the Commission has inspected almost 2,500 Great Lakes Agreement vessels and in only 25 instances, or one percent, did the vessel fail the inspection because of radio problems.¹⁶

6. We agree with the commenters that a further study will not increase safety and that we should not delay privatization to conduct a further study. We are, however, responsible for ensuring that the radio installation required by the Great Lakes Agreement passes a safety inspection and provides safety communications capability for Great Lakes

¹⁰ Notice at ¶ 8.

¹¹ PVA comments at 1.

¹² Id. at 5.

¹³ Id.

¹⁴ Washington Island comments at 2.

¹⁵ PVA comments at 3.

¹⁶ The Commission's ship inspection records for Great Lakes Agreement vessels are maintained in the Chicago field office.

Agreement vessel crew and passengers. Commission inspectors test the output power, frequency tolerance and availability of reserve power, and conduct an operational radio check of the radiotelephone installation during the inspection. Any failure of these critical items results in the vessel failing the annual inspection and not receiving a safety certificate until the failure is corrected. Because the United States is required by the Great Lakes Agreement to fully guarantee the completeness and efficiency of the inspection,¹⁷ we are adopting rules to require two independent certifications that the ship has passed an equivalent inspection. One certification from the inspecting technician that the vessel has passed an inspection and another certification that the vessel owner, operator, or ship's master is satisfied that the inspection was satisfactory. We have also concluded that it is important to the integrity of this ship inspection program that the inspectors be independent of the vessel owners and operators. We are, therefore, providing that the vessel's owner, operator, master, employees or their affiliates may not conduct the required inspections. Further, we will investigate any reports of abuse or violations of the radio equipment requirements of the Great Lakes Agreement to ensure that safety is not adversely affected.

7. Classification society. We requested comments on whether the Commission should permit inspections by persons or organizations other than classification societies.¹⁸ All commenters, except the American Bureau of Shipping (ABS), support allowing FCC-licensed technicians to conduct the inspections.¹⁹ PVA's comments are representative of all commenters' support for this suggestion. PVA notes that it represents U.S. vessel owners that carry more than 90 million passengers each year and that a majority of the 490 Great Lakes Agreement vessels inspected by the Commission are directly affected by this rule making.²⁰ PVA contends that limiting the inspection solely to classification societies will add additional costs to the domestic passenger vessel industry without benefit.

8. ABS generally supports our proposal to privatize Great Lakes Agreement inspections and suggests that it be the only classification society permitted to inspect Great Lakes Agreement vessels that are not classed by another recognized society.²¹ In its reply comments, PVA objects to ABS's proposal and notes that its members, with few exceptions, operate vessels that are not classed and would be forced to seek inspections from ABS.²²

¹⁷ Article XII of the Great Lakes Agreement.

¹⁸ See note 8, *supra*.

¹⁹ Many commenters referred to technicians that hold an FCC first class license. The FCC combined the first class and second class radiotelephone licenses into a new General Radiotelephone Operator License beginning in 1982. See Radio Operator Licensing Program, 4th Report and Order, 46 FR 35450 (July 8, 1981).

²⁰ PVA comments at 1.

²¹ ABS comments at 1.

²² PVA reply comments at 1.

PVA contends that the delegation of inspections, as proposed by ABS, would result in a government-created, single source supplier.²³

9. We agree with commenters who propose that we should permit any FCC-licensed technician to conduct the inspection of Great Lakes Agreement vessels. In its comments, Washington Island notes that, although an FCC inspector can tell it what is wrong (during an inspection), an FCC-licensed technician can determine what is wrong and fix the problem.²⁴ Further, technicians holding a General Radiotelephone Operator License, a GMDSS Radio Maintainer's License, a Second Class Radiotelegraph Operator's Certificate, or a First Class Radiotelegraph Operator's Certificate have passed a written test that requires knowledge of marine law and marine electronics. The tests contain technical and operational questions and passing such a test demonstrates knowledge of Commission Rules and is a requirement for electronic technicians to repair and maintain marine radio equipment used for distress communications. Additionally, as Washington Island notes, modern radio equipment is more reliable than radios of previous eras, and most multi-vessel companies equip their ships with spare radios.²⁵ Moreover, because the radio installations are used for business and operational communications in addition to safety communications, it is in the best business interests of the owner and the ship's master to keep the installations operating for both safety and operational communications. Finally, PVA notes that the inclusion of authority for private sector inspections using FCC-licensed technicians capitalizes on strengths and controls already in place because the technicians are subject to FCC control.²⁶

10. We are, therefore, adopting rules that will permit the inspection of Great Lakes Agreement vessels by the holder of an FCC General Radiotelephone Operator License, GMDSS Radio Maintainer's License, Second Class Radiotelegraph Operator's Certificate, or First Class Radiotelegraph Operator's Certificate. Further, because of the Commission's reorganization, including the closing of three of the offices directly involved in conducting Great Lakes Agreement inspections, we are adopting rules to require that Great Lakes Agreement vessels arrange for an inspection by the private sector in lieu of requesting an inspection from the Commission.²⁷ We will not conduct inspections of ships for compliance with the Great Lakes Agreement and, as a result, will not conduct inspections of ships that

²³ Id.

²⁴ Washington Island comments at 1.

²⁵ Id. at 2.

²⁶ PVA comments at 2.

²⁷ The three offices are Buffalo, New York; St. Paul, Minnesota; and, Allegan, Michigan. See Amendment of Part 0 of the Commission's Rules to Reflect Reorganization of the Compliance and Information Bureau, FCC 95-423, 11 FCC Rcd 1725 (1996).

operate on the Great Lakes for compliance with the Bridge-to-Bridge Act.²⁸ Finally, we are adopting rules that will permit the FCC-licensed inspector to provide certification of the radio installation as required by Article XIII of the Great Lakes Agreement by entering a certification into the ship station log.

11. Other matters. PVA notes that under current practice Great Lakes vessel operators hire service technicians to conduct a pre-inspection and to attend the FCC inspection and that the costs for the service technician are normally less than the fee that the FCC charges, especially in cases of multiple vessel inspections.²⁹ We believe that competition will ensure an equitable price for private sector inspections. Therefore, we are not adopting any regulations regarding the permissible fees for the inspection of a Great Lakes Agreement ship by the private sector. Should a problem with fees arise in the future, we will address the specific facts at that time. Finally, we are requiring that the station logs be retained for two years.

IV. CONCLUSION

12. We are adopting rules that will permit any United States ship subject to the Great Lakes Agreement to arrange for an inspection of the radiotelephone installation by the holder of a General Radiotelephone Operator License, GMDSS Radio Maintainer's License, Second Class Radiotelegraph Operator's Certificate, or First Class Radiotelegraph Operator's Certificate and for that person to certify in the ship station radiotelephone log that the ship has passed the inspection.

V. PROCEDURAL MATTERS

FINAL REGULATORY FLEXIBILITY ANALYSIS

13. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared a Final Regulatory Flexibility Analysis of the expected impact on small entities of the rules adopted in this Report and Order.

14. **Need for and purpose of this action.** The rules we adopt in this proceeding will permit the owners and operators of Great Lakes Agreement vessels to arrange for an inspection by an FCC-licensed operator instead of requiring that all inspections be conducted by FCC personnel. This change will improve the speed and convenience of service to the owners and operators of such vessels, many of which are small businesses and will conserve scarce government resources.

²⁸ See Subpart U of the Commission's Rules, 47 C.F.R. §§ 80.1001-80.1023.

²⁹ PVA comments at 2.

15. **Summary of the issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis.** There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

16. **Significant alternatives considered.** We proposed limiting the inspection of subject vessels to classification societies and requested specific comments on our proposal. Commenters overwhelmingly opposed limiting the inspections solely to classification societies and suggested that we permit anyone with an FCC license to inspect the vessels.

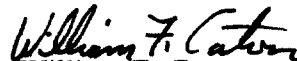
VI. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED that pursuant to the authority contained in Sections 4(i), 303(r), and 307(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 307(c), Parts 0 and 80 of the Commission's Rules, 47 C.F.R. Parts 0 and 80 ARE AMENDED as set forth below.

18. IT IS FURTHER ORDERED that this Report and Order will be effective thirty days after publication in the Federal Register.

19. For further information contact George R. Dillon, Compliance and Information Bureau, telephone (202) 418-1100.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

Attachments

ATTACHMENT A

COMMENTERS

ABS Americas (ABS)
Beaver Island Boat Co. (Beaver Island)
Clipper Navigation, Inc.
Express Navigation, Inc. (Express)
Great Lakes Towing Company (Great Lakes Towing)
Madeline Island Ferry Line (Madeline Island)
National Association of Charterboat Operators (NACO)
Passenger Vessel Association (PVA)
Rendezvous Charters
Washington Island Ferry Line, Inc. (Washington Island)
The Yacht Ultra

REPLY COMMENTS

Passenger Vessel Association (PVA)

EX PARTE

National Marine Electronics Association (NMEA)

ATTACHMENT B

Chapter I of Title 47 of the Code of Federal Regulations, Parts 0 and 80, is amended as follows:

I. PART 0--COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.311 is amended by revising the heading and adding a new paragraph (i) to read as follows:

COMPLIANCE AND INFORMATION BUREAU

§ 0.311 Authority delegated.

* * * * *

(i) The Chief of the Compliance and Information Bureau is authorized to rely on reports, documents or log entries made by the holder of an FCC General Radiotelephone Operator License, GMDSS Radio Maintainer's License, Second Class Radiotelegraph Operator's Certificate, or First Class Radiotelegraph Operator's Certificate as certification that the vessel complies with requirements of Articles XI, XII, and XIII of the Great Lakes Agreement. The Chief, Compliance and Information Bureau is authorized to delegate this authority.

* * * * *

3. Section 0.314 is amended by revising paragraph (l) to read as follows:

§ 0.314 Additional authority delegated.

* * * * *

(l) For inspection or periodical survey as required by Article XII of the Great Lakes Agreement and certification prescribed by Article XIII thereof. The District Director may require that the inspection be conducted by an FCC-licensed technician holding an FCC General Radiotelephone Operator License, GMDSS Radio Maintainer's License, Second Class Radiotelegraph Operator's Certificate, or First Class Radiotelegraph Operator's Certificate.

* * * * *

II. Part 80 - Stations in the Maritime Services

4. The authority citation for Part 80 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 US 3450, 3 US 4726, 12 US 2377.

5. Section 80.59 is amended by revising paragraphs (a), (a)(1), (a)(2) and (b) to read as follows:

§ 80.59 Compulsory ship inspections.

(a) *Application for inspection of ships subject to the Communications Act or the Safety Convention.* FCC Form 801, including documentation that the appropriate inspection fees have been paid, must be used to apply for inspection and certification for ships subject to Part II or Part III of Title III of the Communications Act or the Safety Convention. An inspection of the bridge-to-bridge radio stations on board vessels subject to the Vessel Bridge-to-Bridge Radiotelephone Act will be conducted when the vessels are additionally subject to any of the laws and treaties mentioned in the previous sentence.

(1) Applications for inspections of ships subject to Part II or Part III of Title III or the Safety Convention must be submitted to the Commission in sufficient time to reach the FCC field office serving the port where the ship is to be inspected at least three days prior to the proposed inspection date.

(2) If the inspection described in (a)(1) is to be scheduled on a Sunday, national holiday or during other than established working hours on any other day, the applicant must additionally submit FCC Form 808 to the FCC field office serving the port where the ship is to be inspected at least three days prior to the inspection.

(b) *Inspection and certification of a ship subject to the Great Lakes Agreement.* The FCC will not inspect Great Lakes Agreement vessels. An inspection and certification of a ship subject to the Great Lakes Agreement must be made by a technician holding one of the following: an FCC General Radiotelephone Operator License, a GMDSS Radio Maintainer's License, a Second Class Radiotelegraph Operator's Certificate, or a First Class Radiotelegraph Operator's Certificate. The certification required by § 80.953 must be entered into the ship's log. The technician conducting the inspection and providing the certification must not be the vessel's owner, operator, master, or an employee of any of them. Additionally, the vessel owner, operator, or ship's master must certify that the inspection was satisfactory. There are no FCC prior notice requirements for any inspection pursuant to § 80.59(b).

* * * * *

6. The table in section 80.401 is amended by: adding a new Note 4 to read: "4. Certification of a Great Lakes Agreement inspection may be made by either a log entry or issuance of a Great Lakes Agreement certificate. Radiotelephone logs containing entries

certifying that a Great Lakes Agreement inspection has been conducted must be retained and be available for inspection by the FCC for 2 years after the date of the inspection."; and, amending the entries under the "RADIO STATION CATEGORY" for the category titled "SHIPBOARD: TELEPHONE; GREAT LAKES RADIO AGREEMENT" for the documents listed under STATION LOGS and GREAT LAKES RADIO AGREEMENT SAFETY CERTIFICATE from "R" to "R."

7. Section 80.409 is amended by adding a new sentence at the end of paragraph (b)(2), revising paragraph (f)(2), and adding new paragraphs (f)(2)(i)-(vi) to read as follows:

§ 80.409 Station logs.

* * * * *

(b) * * *

(2) * * * Additionally, logs required by paragraph (f) of this section must be retained on board the vessel for a period of 2 years from the date of the last inspection of the ship radio station.

(f) * * *

(2) Radiotelephony stations subject to the Great Lakes Agreement and the Bridge-to-Bridge Act must record entries indicated by paragraphs (e)(1), (5), (6), (7), (8), (9), (11) and (12) of this section. Additionally, the radiotelephone log must provide an easily identifiable, separate section relating to the required inspection of the ship's radio station. Entries must be made in this section giving at least the following information:

(i) The date the inspection was conducted.

(ii) The date by which the next inspection needs to be completed.

(iii) The inspector's printed name, address and class of FCC license (including the serial number).

(iv) The results of the inspection, including any repairs made.

(v) The inspector's signed and dated certification that the vessel meets the requirements of the Great Lakes Agreement and the Bridge-to-Bridge Act contained in subparts T and U of this part and has successfully passed the inspection.

(vi) The vessel owner, operator, or ship's master's certification that the inspection was satisfactory.

8. Section 80.411 is amended by adding a new sentence to the end of paragraph (b) to read as follows:

§ 80.411 Vessel certification or exemption.

* * * * *

(b) * * *Ships subject to the Great Lakes Agreement may, in lieu of a posted certificate, certify compliance in the station log required by section 80.409(f).

9. Section 80.953 is amended to read as follows:

§ 80.953 Inspection and certification.

(a) Each U. S. flag vessel subject to the Great Lakes Agreement must have an inspection of the required radiotelephone installation at least once every 13 months. This inspection must be made while the vessel is in active service or within not more than one month before the date on which it is placed in service.

(b) An inspection and certification of a ship subject to the Great Lakes Agreement must be made by a technician holding one of the following: a General Radiotelephone Operator License, a GMDSS Radio Maintainer's License, a Second Class Radiotelegraph Operator's Certificate, or a First Class Radiotelegraph Operator's Certificate. Additionally, the technician must not be the vessel's owner, operator, master, or an employee of any of them. The results of the inspection must be recorded in the ship's radiotelephone log and include:

- (1) The date the inspection was conducted;
- (2) The date by which the next inspection needs to be completed;
- (3) The inspector's printed name, address, class of FCC license (including the serial number);
- (4) The results of the inspection, including any repairs made; and,
- (5) The inspector's signed and dated certification that the vessel meets the requirements of the Great Lakes Agreement and the Bridge-to-Bridge Act contained in subparts T and U of this part and has successfully passed the inspection.

(c) The vessel owner, operator, or ship's master must certify that the inspection required by paragraph (b) was satisfactory.

(d) The ship's log must be retained on-board the vessel for at least two years from the date of the inspection.

10. Section 80.1005 is amended by adding two new sentences at the end of the section to read as follows:

§ 80.1005 Inspection of station.

* * *An inspection of the bridge-to-bridge station on a Great Lakes Agreement vessel

must normally be made at the same time as the Great Lakes Agreement inspection is conducted by a technician holding one of the following: a General Radiotelephone Operator License, a GMDSS Radio Maintainer's License, a Second Class Radiotelegraph Operator's Certificate, or a First Class Radiotelegraph Operator's Certificate. Additionally, the technician must not be the vessel's owner, operator, master, or an employee of any of them. Ships subject to the Bridge-to-Bridge Act may, in lieu of an endorsed certificate, certify compliance in the station log required by section 80.409(f).

Attachment C

GREAT LAKES AGREEMENT EXCERPTS

The treaty is titled:

TELECOMMUNICATIONS

Promotion of Safety on the Great Lakes by Means of Radio

Agreement Between the UNITED STATES OF AMERICA and CANADA

Specifically, ARTICLE XII reads:

Annual Inspections and Surveys

1. So far as concerns the enforcement of this Agreement, the radiotelephone stations of all vessels subject to the provisions of this Agreement and the Technical Regulations shall be subject to inspection from time to time. In addition, vessels subject to provisions of this Agreement and to the Technical Regulations of the two countries concerned shall be subject to a periodic survey of the radiotelephone station not less than once every thirteen months. This survey shall be made while the vessel is in active service or within not more than one month before the date on which it is placed in such service.

2. The inspection and survey of radiotelephone stations shall be carried out by the officers of the Contracting Governments for their respective vessels. With respect to any vessel which belongs to any other country, such inspection shall be carried out by officers of the Contracting Governments within whose jurisdiction such vessel first enters, and thereafter by the Contracting Government having jurisdiction as determined by the location of the vessel at least once each thirteen months or at the time of any inspection deemed necessary by such Government.

3. Each Contracting Government may entrust the inspection and surveys of the radiotelephone stations either to surveyors nominated for this purpose or to organizations recognized by it. In every case the Contracting Government concerned fully guarantees the completeness and efficiency of the inspection and survey.

Article XIII reads,

Certification and Privileges

1. If, after appropriate inspection or survey made in accordance with Article XII, the Contracting Government responsible for the inspection or survey is satisfied that all relevant provisions of this Agreement have been complied with, including any exemption or conditions of exemption approved in accordance with Article IX, that fact shall be certified immediately after each such inspection or survey either on the vessel's radiotelephone station license or by

means of another document as determined by the contracting government.

2. The certification prescribed by paragraph 1 of this Article shall be kept on board the vessel while the vessel is subject to the provisions of this Agreement, and shall be available for inspection by the officers authorized by the Contracting Governments to make such inspections. Certifications issued under the authority of a Contracting Government shall be accepted by the other Contracting Government for all purposes covered by this Agreement.